



## City of Phoenix

OFFICE OF THE CITY MANAGER

August 15, 2008

Doug Dunham  
Deputy Assistant Director  
Arizona Department of Water Resources  
3550 North Central Avenue  
Phoenix, AZ 85012

Re: Draft Rules on Transportation of Groundwater to an Active Management Area

Dear Mr. Dunham,

The City of Phoenix ("City") hereby submits its comments to the Department of Water Resources draft Rules on the Transportation of Groundwater to an Active Management Area. These comments refer to the June 18, 2008 draft presented at the public meeting in Phoenix.

The City's comments address rules relating to Mc Mullen Valley and to the Big Chino Sub-basin. The City's McMullen Valley water rights are an integral part of the City's water resource portfolio, as identified in the 2005 Water Resources Plan Update. The City is interested in maintaining the utmost flexibility allowed under the law to use those rights. Additionally, the City is concerned about potential impacts to the Verde River from the transportation of groundwater from the Big Chino sub-basin. The City has a vested water right at Horseshoe Reservoir and additional water rights to the Verde River for lands within the SRP service area.

### **The Rules Should Not Allow Aggregation Of HIA Acres To Calculate The Annual Transportation Allotment For Big Chino Sub-basin Farms**

The section of the statutes addressing the calculation of the annual transportation allotment for pumping from the Big Chino sub-basin (A.R.S. § 45-555(B)) clearly states that the amount for each farm or portion of a farm must be determined separately. This statute is very different from the parallel statute for McMullen Valley (A.R.S. § 45-552). In the McMullen Valley statute, to perform the calculation the director shall, "[m]ultiply the sum of those historically irrigated acres for all such farms or portions of farms by three acre-feet per acre." In contrast, the Big Chino language states that the director shall "(f)or each such farm or portion of a farm, determine the historically irrigated acres retired from irrigation. Multiply the sum of those historically irrigated acres by three acre-feet per acre". Clearly the legislature intended these statutes to be different, allowing for aggregation of acreage into one calculation for McMullen Valley, but not for the Big Chino sub-basin.

This is a particular concern to the City due to the potential impacts to the Verde River from centralized pumping in the Big Chino. Taken together, R12-15-1401(8), R12-15-1405 (C), R12-15-1409 and R12-15-1408, inappropriately allow for pumping to be aggregated from a single location in the Big Chino sub-basin. The calculation of annual transportation allotment from aggregated Historically Irrigated Acres ("HIA") in combination with allowing all the pumping to occur on one retired farm, will allow for a more immediate and significant affect on the flow of the upper Verde River than pumping from any one "farm or portion of a farm owned or leased by a city or a town in the sub-basin."

**ADWR's Use of Proposed, But Failed, Legislation To Interpret the Statutes To Allow For Aggregation Of Pumping Is Flawed**

During the June 18, 2008 public hearing on the proposed rules, Department staff indicated that they had relied on draft groundwater transportation legislation, not the legislation enacted and codified in Article 8.1, to interpret the existing statutes. In fact, the Department stated that because earlier drafts relating to aggregation of pumping in the Big Chino and McMullen Valley sections were similar, that the statutes that passed could be interpreted identically. The City does not believe that ADWR's use of legislation that did not pass to interpret current statute is valid. The Department should rely upon the clear difference in the statues and remove the allowance to aggregate pumping in the Big Chino sub-basin.

**The Statutes Require A Determination That HIA Were Irrigated With Groundwater**

The statutes require that HIA must be irrigated with groundwater and that only groundwater is eligible for transportation to an adjacent Active Management Area. The proposed rules do not directly address those statutory requirements, nor do they set up a process that meets the statutory requirements that the water in question must be groundwater. The rules only direct applicants for determinations of lands that qualify as HIA to identify lands that were irrigated with groundwater between January 1, 1975 and January 1, 1990, "*if known*". (emphasis added). There is no requirement to provide evidence that the lands were actually irrigated with groundwater, and not appropriable water or "subflow." The Department must require proof that lands were irrigated with percolating groundwater in order to be HIA, as the statute requires.

**Imposing A Time Limit On The Determination of Annual Transportation Allotment Is Not Justified**

The statutes are very detailed regarding the calculation of the volume of a transportation allotment. However, there is no statutory language that limits the use of the transportation allotment to a specific period of time. There is no statutory justification for the 100-year permit limitation proposed in R12-15-1403 D. A transportation allotment must not be limited to a specific time period, especially since appropriate limitations on its use exist for the volume or rate of use.

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Limiting the time frame for use may actually exacerbate local area impacts or impacts to the Verde River by creating an incentive to pump groundwater at a greater volume or rate to insure that the total transportation allotment can be used within the time frame of the permit.

Thank you for the opportunity to provide comments on these draft rules.

Sincerely

A handwritten signature in blue ink, appearing to read "Tom Buschatzke", with a large, stylized initial "T" and "B".

Tom Buschatzke  
Water Advisor